

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARICELA RAMIREZ,

Plaintiff,

v.

ALEXANDER CHOW, M.D., VAN HYUN,
M.D., MARK HUBBARD, M.D.,
CLAUDIA FOSTER-OLSON, M.D.,
VANCOUVER CLINIC, DOES 1 TO 100,

Defendants.

CASE NO. 12-cv-05630 JRC

ORDER DENYING PLAINTIFF'S
EX PARTE MOTIONS AND
GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

THIS MATTER comes before the Court on plaintiff's Motion for Relief from Order (ECF No. 61), plaintiff's Motion to Stay (ECF No. 62) and defendants' Motion for Summary Judgment (ECF No. 43). For plaintiff's motions, the Court has reviewed the motions and praecipe (ECF Nos. 61, 62, 63) and defendants' response (ECF 64). For defendants' motion for summary judgment, the Court has reviewed defendants' motion and declarations in support of their motion for summary judgment (ECF Nos. 43, 44, 45, 46), plaintiff's responses to

1 defendants' motion for summary judgment (ECF Nos. 49, 50, 52, 54, 55), defendants' reply to
2 plaintiff's responses (ECF No. 53). This matter is now ripe for decision.

3 Plaintiff has been given every opportunity to provide evidence to the Court to support her
4 claim of discrimination and negligence, but has failed to do so. Defendants are also entitled to
5 have a ruling from the Court on their motion for summary judgment. Therefore, plaintiff's latest
6 motions (ECF Nos. 61, 62) are DENIED and defendants' motion for summary judgment (ECF
7 No. 43) is GRANTED.

8 DISCUSSION

9 In her Third Amended Complaint, plaintiff claims that defendants Drs. Van Hyun, M.D. and
10 Chow, M.D. "deliberately misdiagnosed and deliberately denied adequate medical care" to plaintiff
11 resulting in permanent kidney failure, failure of other internal organs, and cancer (ECF No. 30, p. 3).
12 She claims that she was deliberately discriminated against by all of the defendants because of her
13 race and disability, and was deliberately denied adequate medical care. She also alleges that
14 defendants participated in "cover up," failed to provide adequate medical care, and deliberately lied
15 to plaintiff regarding her medical condition (*id.* at pp. 3-6). As a result of these acts and omissions,
16 plaintiff claims defendants negligently caused damage to her and that this damage was the result of
17 deliberate discrimination against her "because of her Mexican-American race and disability,"
18 resulting in permanent damage to her internal organs (*id.* at 6).

19 When defendants initially filed their motion for summary judgment, they submitted
20 letters that were sent to plaintiff advising her that they intended to move for summary judgment
21 and what she needed to do to respond to that motion (ECF No. 43, pp. 3-4). Among other things,
22 in a letter dated April 29, 2013, Ms. Ramirez was informed as follows:

23 Since we have not heard from you, we will proceed with filing a
24 Motion for Summary Judgment to have your case dismissed. A motion for
summary judgment under Rule 56 of the Federal Rules of Civil Procedure

1 will, if granted, end your case. Rule 56 tells you what you must do in order
2 to oppose a motion for summary judgment. Generally, summary judgment
3 must be granted when there is no genuine issue of material fact—that is, if
4 there is no real dispute about any fact that would affect the result of your
5 case, the party who asked for summary judgment is entitled to judgment as a
6 matter of law, which will end your case. When a party you are suing makes
7 a motion for summary judgment that is properly supported by declarations
8 (or other sworn testimony), you cannot simply rely on what your complaint
9 says. Instead, you must set out specific facts in declarations, depositions,
10 answers to interrogatories, or authenticated documents, as provided in Rule
11 56(e), that contradict the facts shown in the defendants’ declarations and
12 documents and show that there is a genuine issue of material fact for trial. If
13 you do not submit your own evidence in opposition, summary judgment, if
14 appropriate, may be entered against you. If summary judgment is granted,
15 your case will be dismissed and there will be no trial.

16 (ECF No. 44, Ex. 3).

17 In a recent case cited by the Ninth Circuit, *Woods v. Carey*, 684 F.3d 934, 939-40 (9th
18 Cir. 2012), the court concluded that a pro se plaintiff who was incarcerated should be provided
19 notice at the time of the summary judgment motion of the steps that should be taken to properly
20 respond to such a motion (*id.*). *Woods* involved an unrepresented prisoner, who may be at a
21 more significant disadvantage than someone like plaintiff, who is not incarcerated. While
22 plaintiff is unrepresented, she is capable of accessing information and other resources that are not
23 available to a person behind bars. As the court noted, “there are ‘unique handicaps of
24 incarceration,’ including prisoners’ limited access to legal materials, constraints on their abilities
25 to obtain evidence, and difficulties monitoring the progress of their cases . . .” *id.*, at 938, which
26 do not apply to someone like plaintiff, who is not incarcerated. Nevertheless, it appears that
27 defendants made every effort to provide plaintiff with a notice similar to the one required under
28 *Woods*, so that plaintiff was fully advised of what she needed to do to respond to the summary
29 judgment motion.

30 Plaintiff did not provide such evidence, and instead made her first of several requests for
31 extensions and stays (ECF No. 42). This Court granted one of plaintiff’s requests and gave her

1 until June 7, 2013 to file additional materials (ECF No. 58, p. 5). Instead of complying with that
2 Order, plaintiff asked for another continuance (ECF No. 59), which this Court denied (ECF No.
3 60). Now, before the Court are two more motions for relief and continuance (ECF Nos. 61, 62).
4 Those motions, as well, are meritless and not in compliance with the rules.

5 Summary judgment is appropriate if “the pleadings, the discovery and disclosure
6 materials on file, and any affidavits, show that there is no genuine issue as to any material fact
7 and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). There is a
8 genuine issue of fact for trial if the record, taken as a whole, could lead a rational trier of fact to
9 find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *see*
10 *also T. W. Elec. Service Inc. v. Pacific Electrical Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir.
11 1987). The moving party is entitled to judgment as a matter of law if the nonmoving party fails
12 to make a sufficient showing on an essential element of a claim on which the nonmoving party
13 has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1985); *Anderson*, 477
14 U.S. at 254 (“the judge must view the evidence presented through the prism of the substantive
15 evidentiary burden”). When presented with a motion for summary judgment, the court shall
16 review the pleadings and evidence in the light most favorable to the nonmoving party. *Anderson*,
17 477 U.S. at 255 (*citing Adickes v. S.H. Dress & Co.*, 398 U.S. 144, 158-59 (1970)). Conclusory,
18 nonspecific statements in affidavits are not sufficient; and, the court will not presume “missing
19 facts”. *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888-89 (1990).

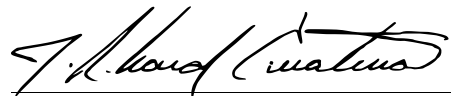
20 In this case, plaintiff has failed to make a sufficient showing on essential elements of her
21 claims on which she has the burden of proof. Among other things, plaintiff has failed to submit
22 competent medical evidence regarding her physical condition or that this condition was caused
23 as a result of defendants’ alleged negligence and/or discrimination. While plaintiff has repeated
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1 a number of allegations of negligence and discrimination, these allegations are conclusory and
2 nonspecific and are not sufficient to defeat a motion for summary judgment.

3 While the court liberally construes plaintiff's pleadings, it is still incumbent on plaintiff
4 to comply with court rules and to submit sufficient evidence to defeat a motion for summary
5 judgment. Plaintiff has failed to do so here.

6 Therefore, plaintiff's Motion for Relief from Order (ECF No. 61) and Motion for Stay
7 (ECF No. 62) are DENIED and defendants' Motion for Summary Judgment (ECF No. 43) is
8 GRANTED and plaintiff's claims against defendants are dismissed with prejudice.

9 Dated this 12th day of July, 2013.

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12 J. Richard Creatura
13 United States Magistrate Judge
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